

1 Prober & Raphael, A Law Corporation
2 Dean Prober, Esquire, #106207
3 Lee S. Raphael, Esquire, #180030
4 Cassandra J. Richey, Esquire #155721
5 Melissa A. Vermillion, Esquire #241354
6 Peter J. Solimon, Esquire #269660
7 Joseph Garibyan, Esquire #271833
8 Bonni S. Mantovani, Esquire #106353
9 P.O. Box 4365
10 Woodland Hills, CA 91365-4365
11 (818) 227-0100
12 F.040-2583
13 Attorneys for Objecting Secured Creditor
14 U.S. Bank, N.A., successor in interest to the
15 FDIC as receiver for Downey Savings and
16 Loan Association, F.A.

11 UNITED STATES BANKRUPTCY COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 In re	)	Bk. No. 11-52433-ASW-13
)	
15 ALFREDO P. OCAMPO aka ALFREDO)	
16 OCAMPO and MARIA CORAZON OCAMPO)	
17 aka MARIA OCAMPO,	)	Chapter 13
)	
18 Debtors.)	
	)	OBJECTIONS TO PROPOSED
	)	CHAPTER 13 PLAN
	)	AND CONFIRMATION THEREOF
)	
	)	Confirmation Hearing -
	)	Date : May 9, 2011
	)	Time : 1:45 p.m.
	)	Place: U.S. Bankruptcy Court
	)	280 South First Street
	)	Courtroom 3020, 3 rd Floor
	)	San Jose, CA
)	

26 U.S. Bank, N.A., successor in interest to the FDIC as receiver for Downey
27 Savings and Loan Association, F.A., secured creditor in the above-entitled Bankruptcy
28

proceeding, its assignees and/or successors in interest, hereby submits the following objections to the confirmation of that certain Chapter 13 Plan (the "Plan") proposed by Debtors:

LACK OF ADEQUATE FUNDING

The Plan is not adequately funded. 11 U.S.C. §1325(a)(5)(B)(ii) requires full payment of the allowed claim of this objecting Secured Creditor. The Proof of Claim filed by this creditor establishes total pre-petition arrearages in the amount of \$13,443.18, not \$10,954.86 as provided for in the plan. Accordingly, even if all payments are tendered pursuant to the Plan, they will not be sufficient to satisfy this creditor's claim in full. Thus, the Plan does not provide adequate protection of this creditor's interests as required by 11 U.S.C. §361, and does not meet the "feasibility" requirement of 11 U.S.C. §1325(a)(6).

IMPERMISSIBLE MODIFICATION

Debtors' proposed Plan attempts to modify Secured Creditor's original Note and Trust Deed, which is in direct violation of §1322(b)(2), which states that a Debtor may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the Debtors' principal residence".

FAILURE TO PROVIDE FOR INTEREST ON ARREARS

Debtors' plan must provide for interest on Secured Creditor's arrearages, as required by §1322(e), and as provided for in Secured Creditor's "Rider to Promissory Note and Security Instrument."

"Notwithstanding subsection (b) (2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law."

§1322(e) (emphasis added).

"Should any sum due hereunder, including accumulated interest, not be paid in accordance with the terms of the Note, the sums not paid shall bear interest at the same rate as the principal, or 6.0% plus the Bank of America Prime rate as publicly announced by the Bank of America National Trust and Savings Association, a National Association as its

1 “Referenced Rate”, whichever is higher,...” (Emphasis Added)

2 A true and correct copy of Secured Creditor’s “Rider to Promissory Note and
3 Security Instrument” is attached hereto as “**Exhibit A**” and made a part hereof. The contract rate
4 on Secured Creditor’s loan is currently 3.00%, and the prime interest rate is currently **3.25%**.
5 Therefore, the proper rate of interest on Secured Creditor’s arrearages is the Bank of America
6 Prime Rate plus 6%, or **9.25%**
7

8 CONCLUSION

9 Any Chapter 13 Plan proposed by Debtors must provide for and eliminate the
10 objections specified above in order to be feasible and to provide adequate protection to this
11 objecting secured creditor. It is respectfully requested that confirmation of the Chapter 13 Plan
12 as proposed by Debtors, be denied.
13

14 WHEREFORE, secured creditor prays as follows:

- 15 (1) That confirmation of the proposed Chapter 13 Plan be denied.
16 (2) For attorneys' fees and costs incurred herein.
17 (3) For such other relief as this Court deems proper.

18 Dated: April 28, 2011

Prober & Raphael, A Law Corporation

19 By /s/ Lee S. Raphael

20 LEE S. RAPHAEL, ESQUIRE#180030

21 Attorney for Secured Creditor

22 20750 Ventura Boulevard, Suite 100

23 Woodland Hills, California 91364

(818) 227-0100

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